



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Harry Tisch,
Contract Administrator 1 (S0658W),
Department of Community Affairs

CSC Docket No. 2020-77

List Removal Appeal

ISSUED: DECEMBER 6, 2019

Harry Tisch appeals the appointing authority’s request to remove his name from the eligible list for Contract Administrator 1 (S0658W), Department of Community Affairs, on the basis of an unsatisfactory employment record.

In disposing of the OS190142 certification, the appointing authority requested the removal of the appellant’s name, a disabled veteran, contending that he had an unsatisfactory employment record. Specifically, the appointing authority indicated that the appellant had been terminated at the end of his working test period for another position he had held with the agency, Planned Real Estate Development Analyst, effective July 7, 2016. In support of its request, the appointing authority provided copies of the appellant’s “Report of Progress of Probationer,” memorandums to the appellant and to the file concerning his performance, and various emails.

On appeal, the appellant states that after he returned from a leave of absence on May 16, 2016, his supervisor indicated on his final Report of Progress of July 6, 2016, “[w]hen you returned to work on May 16, 2016, it appeared that you had forgotten most of the information you had learned in the first four months.” The appellant explains that during this time, his thoughts were “not on retaining what I had learned at PRED, but on other life difficulties that I was attempting to reconcile.” He maintains that he has never had an unsatisfactory work history in his many years of varied experience and the appellant highlights his work history as owner of Tisch Development, the City of Trenton, the Human Resource Development Institute, and Greater Trenton Healthcare. Further, the appellant states the he currently works with Sunrise Systems, a contracting agency to the

appointing authority, in the Hurricane Sandy Recovery Division and has accepted a position with Devereux Foundation. The appellant notes that his work in the Hurricane Sandy Recovery Division has been exemplary and that he reports to the Division Director. Additionally, the appellant argues that his prior experience with the agency that resulted in his termination at the end of his working test period was an anomaly brought about by extenuating circumstances, one of them being the fact that all of the other employees he interacted with were attorneys. The appellant also references an email dated April 26, 2019 from one of his interviewers to the appointing authority and claims that the interviewer “misinterpreted the nuance of interviewing a person with years of experience behind him.” He also explains his comments noted by the interviewer regarding “babysit[ting] a grantee” and referring to his previous supervisor at the Department of Human Services as “one of those lifer civil servant types.”

In response, the appointing authority states that during his interview on April 10, 2019, upon direct inquiry regarding his reasons for leaving the Department of Community Affairs in 2016, the appellant informed the hiring manager that he was “looking for greater opportunities” and “was not interested in the work.” However, he did not inform the hiring manager that he had been terminated from his prior employment with the Department of Community Affairs. As the appellant was not forthcoming with his reasons for previously leaving the agency, this caused further concern. As the subject list is for general use, the appointing authority states that it requested that it be permitted to bypass the appellant due to his unsatisfactory employment history. However, the appointing authority states that it was advised that it could only request removal of the appellant’s name from the list.

In reply, the appellant presents that his reason for stating during his interview that he was “looking for greater opportunities” and was “not interested in the work,” was “simply embarrassment.” He states that he has “no other explanation for not being more forthcoming.” The appellant reiterates that the basis to remove his name from the list is on “a narrow and singular analysis of [his] abilities” and that he currently works with an entity that contracts to the Department of Community Affairs. Additionally, the appellant argues that there was no basis on which to request the bypass of his name from the list, and, once a bypass was impossible, there should have been no impetus to even seek an alternative route to exclude him from consideration for the position. He claims that the appointing authority is attempting to deny a disabled veteran a job and bypass the very legislation put in place to protect job opportunities for veterans.

In further response, the appointing authority states that the hiring manager was not provided with a copy of the file related to the appellant’s unsatisfactory working test period while he was employed in another division. Rather, since the appellant indicated on his resume that he previously worked for the Department of

Community Affairs, the hiring manager consulted with the Office of Human Resources regarding his prior employment. The appointing authority states that it had concerns hiring the appellant due to his unsatisfactory work history as reflected by his termination at the end of his working test period. It emphasizes that these concerns were reinforced when it was discovered that the appellant was not truthful during his job interview about the reasons for previously leaving the Department of Community Affairs. Regarding his unsatisfactory performance during his working test period, the appointing authority notes that at the end of the appellant's initial four-month working test period, the appellant's supervisor requested a two-month extension to allow him additional time to satisfactorily complete the working test period. However, the appellant was on an extended leave of absence, and, upon his return, his working test period was again extended due to his leave of absence. Despite the extension, the appellant was unable to satisfactorily complete the working test period and was terminated July 7, 2016. Although advised of his right to appeal that determination, the appointing authority underscores that he did not file an appeal as a result of his termination. Additionally, the appointing authority underscores that the appellant was hired via a temporary employment agency to work in the Sandy Recovery Division, and such temporary employees are not hired through the Office of Human Resources. Finally, the appointing authority emphasizes that it follows all Civil Service law and rules regarding the handling of all personnel matters.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)7*, allows the removal an eligible's name from an eligible list who has a prior employment history which relates adversely to the position sought.

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)6*, allows the removal of an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process.

N.J.A.C. 4A:4-6.3(b), in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the matter at hand, the appointing authority had ample reason to remove the appellant's name from the subject eligible list based on an unsatisfactory employment history and the fact that he was not truthful during his job interview about the reasons he previously left the Department of Community Affairs. Due to his prior unsatisfactory work performance, the appointing authority released the appellant at the end of his working test period. While the appellant claims his

thoughts were “not on retaining what I had learned at PRED, but on other life difficulties that I was attempting to reconcile,” the appointing authority clearly attempted to accommodate his needs by granting him an extensive leave of absence, but also by extending his working test period an additional two months. He also suggests that his inability to successfully perform the duties of his prior position as a Planned Real Estate Development Analyst was because he was the only non-attorney in such a position. However, the requirements in the job specification for Planned Real Estate Development Analyst, the title to which he was found to meet the minimum requirements based on his experience, are a Bachelor’s degree and three years of experience in the review and processing of legal documents relating to the development and sale of residential real estate and financial contracts and statements. It is also noted that the appellant did not appeal the appointing authority’s decision to terminate him at the end of his working test period, despite being advised of his right to do so. Clearly, an applicant’s recent prior employment history in a career service position with the same appointing authority are material to its consideration if the individual seeks reemployment by that same appointing authority.¹

What is particularly troubling is the appellant’s admitted lack of candor regarding his prior service with the Department of Community Affairs during his interview with the hiring manager. It cannot be ignored that the appellant informed the hiring manager during his interview for the subject position that he was “looking for greater opportunities” and “was not interested in the work.” However, **he did not** inform the hiring manager that he had been terminated from his prior employment with the Department of Community Affairs. Since the appellant indicated on his resume that he previously worked for the Department of Community Affairs, the hiring manager consulted with its Office of Human Resources regarding his prior employment. It is at that point the appointing authority confirmed to the hiring manager that the appellant was terminated as a Planned Real Estate Development Analyst due to his unsatisfactory work history at the end of his working test period. The appellant does not challenge the appointing authority’s assertions and only states that it was “simply embarrassment” and that he has “no other explanation for not being more forthcoming.” Therefore, the appellant admits that he was not truthful during his job interview about the reasons for previously leaving the Department of Community Affairs.

The information that the appellant failed to disclose is considered material and should have been accurately indicated on his employment application and

¹ The fact that the appellant was hired via a temporary employment agency to work in a temporary position with the Sandy Recovery Division is not germane in this matter. The position that is the subject to this appeal is a tenured position in the career service. These candidates are screened and appointed by the appointing authority through its Office of Human Resources. Temporary employees in this case are not hired through the Office of Human Resources nor are they subject to Civil Service law and rule.

during the appointing authority's interview. The Appellate Division of the New Jersey Superior Court in *In the Matter of Nicholas D'Alessio*, Docket No. A-3901-01T3 (App. Div. September 2, 2003), affirmed the removal of a candidate's name based on his falsification of his employment application and noted that the primary inquiry in such a case is whether the candidate withheld information that was material to the position sought, not whether there was any intent to deceive on the part of the applicant. In this case, the appellant had ample notice of the importance of accurately completing his application and resume, and advising the appointing authority of his employment history, since he was previously removed from another eligible list for falsification and was unsuccessful on appeal. Indeed, in *In the Matter of Harry Tisch, Building Management Services Specialist 2 (S0902S), Department of Military and Veterans Affairs*, Docket No. A-4913-15T2 (App. Div. April 4, 2018), in upholding the appellant's removal from the list, the Appellate Division agreed with the Civil Service Commission's reasoning that it was difficult to believe that the appellant:

Simply forgot to put his experience with [DOT] on his application and resume and mistakenly put the wrong dates regarding his experience with HMFA and DCA on his application and the wrong dates regarding his experience with HMFA on his resume when these positions were held within one year of submitting his application and resume with [DMVA].

The New Jersey Superior Court, Appellate Division, determined that Civil Service law and rules provide that certain disqualifications, including an eligible's adverse employment history, carry forward onto subsequent eligible lists. *See In the Matter of Bryon Pugh*, Docket No. A-6267-00T5 (App. Div. October 22, 2002). The Appellate Division stated that "if the applicant's employment history is disqualifying for one list, it should normally remain disqualifying on subsequent lists, unless the appointing authority agrees that 'good cause' warrants retention on the list." Germane to this matter, the Appellate Division in *Pugh* also stated if each eligible list is treated as a self-contained compartment that may not be breached by an applicant's conduct or record in connection with any prior list, an applicant "who lied on a previous application could submit a new complete application and have the previous lie, in effect, expunged." Thus, an "appointing authority and the [Civil Service Commission] would not ever be able to consider the dishonesty in subsequent applications." In the instant matter, the appellant **again** provides misleading information concerning his prior employment background, but to a different State appointing authority. Clearly, the appellant's prior employment history with the appointing authority was a material fact and his explanation that he was "simply embarrassed" and had no other reason for not being forthcoming during the interview does not change the fact that his statements during the interview were misleading. subsequent applications." Therefore, the appellant's recent adverse employment history with the appointing authority, as well as his

misleading actions during the selection process, sufficient reasons to remove his name from the list.

The appellant raises issues regarding the appointing authority's initial request to bypass his name. As indicated earlier, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a), allows the removal an eligible's name from an eligible list for various reasons, such as lacking the job requirement, is ineligible by law for employment in the title, is physically or psychologically unfit to perform the duties of the title, has failed to pass examination procedures, has been removed from public service for disciplinary reasons, for making false statements of material facts or deception during the selection and appointment process, has an adverse prior employment history, failed to pay the required fee, or has an adverse criminal record. As such, regardless if the eligible is a disabled veteran, veteran, or non-veteran, an appointing authority may request the removal of the eligible from the list if he or she meets any of the disqualifying factors set forth in *N.J.A.C.* 4A:4-6.1(a) or *N.J.A.C.* 4A:4-4.7(a). However, given the discretionary, non-cause basis for bypasses, there is no corresponding regulatory provision that permits the bypass of a disabled veteran or veteran eligible who indicates that he or she is interested in a position to which he or she is certified from an open competitive list. Thus, given that disabled veterans and veterans are required to be offered the position if interested, permitting an appointing authority to bypass an interested disabled veteran or veteran if he or she evidenced none of the established regulatory basis for removal from the list, would effectively circumvent veteran preference rights. As such, if there is not a basis on which to remove a disabled veteran or veteran from an eligible list, he or she cannot be bypassed, and, if interested, a permanent appointment is mandated subject to any required medical or psychological evaluations and successful completion of a working test period. This was not the case in the instant matter as the appellant has an adverse employment record with the appointing authority and he admitted that he was deceptive in the selection and appointment process.

The appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient justification for removing his name from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE DAY 4TH OF DECEMBER, 2019

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